

empowered to authorize a transfer of moneys from one detailed classification to another under the general heading "Personal Service" and from one detailed classification to another under the general heading "Maintenance." The board is without power to authorize a transfer from one detailed classification to another in the group "Additions and Betterments," or from a detailed classification in one group to a classification in another group.

5. Since such action would circumvent the Governor's constitutional prerogative to veto any item or items in an appropriation bill, the Controlling Board is without authority to set up a classification for any department when the General Assembly has not provided such a classification in the appropriation act.

6. Since such action would have the effect of nullifying the Governor's veto power where, by vetoing an entire appropriation item a classification in an appropriation bill has been entirely wiped out, the Controlling Board is without authority to restore such classification or to authorize a transfer of funds thereto.

In view of the foregoing, specifically answering your questions, it is my opinion that:

1. The Controlling Board is without authority to authorize a transfer of moneys appropriated by the Legislature to the Fish and Game Division of the Department of Agriculture as "F 9, Uses and Purposes" under the heading "Maintenance" to any detailed classification within the group "Additions and Betterments" for the purpose of covering the cost of raw material to be used in erecting a building on the Ohio State Fair Grounds to house an exhibit of wild animal life at the Ohio State Fair.

2. If, under the broad powers vested in the Director of Agriculture by Sections 1433, 1438 and related sections of the General Code, the Director of Agriculture should determine that moneys in the "Uses and Purposes" fund should be expended for the purpose of purchasing cages to exhibit wild animal life at the Ohio State Fair in furtherance of the laws relating to the protection, preservation and propagation of wild animals and the Board of Control should approve a transfer of moneys in the classification "Uses and Purposes," appropriated to the Division of Fish and Game under the heading "Maintenance," to the classification "E 8. Educational" under the same heading for such purpose, such determination would probably not be disturbed by the courts.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

825.

OFFICES—MEMBER OF CITY BOARD OF EDUCATION AND BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS ARE INCOMPATIBLE—MEMBER OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS MAY SERVE AS CLERK OF A BOARD OF EDUCATION.

SYLLABUS:

1. *The offices of member of a city board of education and member of the board of deputy state supervisors of elections are incompatible.*

2. *A member of the board of deputy state supervisors of elections may serve as clerk of a board of education.*

COLUMBUS, OHIO, August 4, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“Your opinion is desired upon the following questions: First, can a deputy supervisor of elections serve in this capacity and also serve as member of the city board of education? Second, can a deputy supervisor of elections hold this office and also be clerk of his city board of education?”

You advise me that this question arises for the reason that a person who is a member of the city board of education was recently appointed as member of the board of deputy state supervisors of elections. You further advise that said person is also clerk of the board of education.

In answer to your first inquiry I advise that there is no specific provision of statute which prohibits one person holding both offices, and it would be physically possible for an individual to serve in both capacities.

This then leaves for consideration the question of whether or not the two offices are otherwise incompatible.

Offices may be said to be incompatible when the functions of the offices are inconsistent or where one is a check upon the other.

“The inconsistency which at common law makes offices incompatible does not consist in the physical impossibility to discharge the duties of both offices; but rather in a conflict of interest, as where the incumbent of one office has the power to remove the incumbent of another, or to audit the accounts of another, or to exercise a supervision over another as in the case of a judicial officer and his subordinate ministerial officer. The constitution or a statute often expressly provides that certain offices shall be incompatible. Such a statutory incompatibility is often inferred from the common provisions in the state constitutions intended to secure the distribution of the three powers of government among the three departments of government. The acceptance of an incompatible office by the incumbent of another office is regarded as a resignation or vacation of the first office.” 29 Cyc. p. 1382.

See also *State ex rel. Attorney General v. Gebert*, 12 O. C. C. (N. S.) 274.

The city board of education is charged with the finances of the city school district and is interested in the matter of raising revenues therefor and disbursing the school funds of the district.

Your attention is directed to Section 5053 of the General Code, which relates to the duty of the board of elections to apportion expenses of certain elections and charge the same against the proper subdivisions. The language of the section is as follows:

“In November elections held in odd numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such town-

ship, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor. In municipalities situated in two or more counties, the proportion of expense charged to each of such counties shall be ascertained and apportioned by the clerk or auditor of the municipality and certified by him to the several county auditors."

School elections are held at the November election in the odd numbered years, as mentioned in said section, and by reason thereof it becomes the duty of the deputy state supervisors of elections to ascertain and apportion the expenses of said election and determine the amount which should be paid by the various townships, municipalities and boards of education within the county. After the supervisors determine the amount to be paid by the various subdivisions said finding is certified to the county auditor, and it is the duty of the county auditor to deduct said amounts from the funds of the various subdivisions.

It readily can be seen that if a member of a board of education is also a member of the board of deputy state supervisors of elections he would be in the position of having to apportion the expenses of the election between the board of education of which he is a member and the other subdivisions involved. There would therefore be a conflict of interests in making the charge and in the payment thereof. The duties of the incumbent as a member of the board of education and as deputy state supervisor of elections would be in conflict.

I am of the opinion that this fact alone is sufficient to make the offices of member of a city board of education and member of the board of deputy state supervisors of elections inconsistent and incompatible.

Your second question is whether or not a deputy supervisor of elections may also be clerk of the board of education.

Section 4747 of the General Code provides for organization of the board of education, and provides that it shall elect certain officers

"and a person who may or may not be a member of the board shall be elected clerk."

This section therefore permits the board of education to elect some one other than a member to be clerk of the board. Such clerk, however, only serves the board in a ministerial capacity. He exercises no power independent of the board and has no duties prescribed by law. See *Board of Education of the City School District of the City of Cleveland vs. Featherstone*, 110 O. S. 669.

There is no statute prohibiting a member of the board of deputy state supervisors of elections from becoming clerk of the board of education, nor is there any such prohibition against such clerk becoming a member of the board of deputy state supervisors of elections. Whether or not it is physically possible for the clerk to serve in both cases would be a question of fact to be determined by the appointing board.

Since the clerk only serves the board of education in a ministerial capacity, it could not be said that the duties of such position are incompatible with those of a member of the board of deputy state supervisors of elections.

It is therefore my opinion that a member of the board of deputy state supervisors of elections may serve as clerk of a board of education.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*